

INVESTMENT INCENTIVE AGREEMENT

04 - 146

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE UNITED MEXICAN STATES

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and THE GOVERNMENT OF THE UNITED MEXICAN STATES;**

AFFIRMING their common desire to encourage economic activities in the United Mexican States that promote the development of the economic resources and productive capacities of the United Mexican States; and

RECOGNIZING that this objective can be promoted through investment support provided by the Overseas Private Investment Corporation ("OPIC"), a development institution and an agency of the United States of America, in the form of investment insurance, coinsurance and reinsurance, debt and equity investments and investment guaranties;

HAVE AGREED as follows:

ARTICLE 1

(a) As used in this Agreement, the following terms have the meanings herein provided. The term "Issuer" refers to OPIC and any successor agency of the United States of America, and any agent of either, but does not refer to the Government of the United States of America. The term "Investment Support" refers to any debt or equity investment, any investment guaranty and any investment insurance, reinsurance or coinsurance provided by the Issuer (or, in the case of coinsurance, provided by the Issuer and commercial insurance companies ("Coinsurers") under coinsurance arrangements under which the Issuer acts both for itself and for such Coinsurers), or other investment activities of the Issuer which are permitted by U.S. law in connection with projects or activities in the territory of the United Mexican States. The term "Taxes" means all present and future federal taxes, levies, imposts, stamps, duties and charges, whether direct or indirect, imposed in the United Mexican States and all liabilities with respect thereto.

(b) The Issuer may provide to eligible investors (as defined by applicable United States laws and regulations), including such eligible investors in the territory of the United Mexican States, Investment Support in connection with projects or activities in the territory of the United Mexican States. Eligible investors in the territory of the United Mexican States may enter into agreements for Investment Support with the Issuer.

(c) The Issuer will undertake Investment Support only in respect of projects and activities permitted by the North American Free Trade Agreement ("NAFTA") or the laws of the United Mexican States existing at the time the Investment Support is undertaken.

ARTICLE 2

(a) With regard to Investment Support conducted in accordance with the laws and regulations of the United States of America, the Issuer shall not be subject to regulation under the laws of the United Mexican States that govern the organization, operation or activities of insurance or financial institutions.

(b) The Issuer, all operations and activities undertaken by the Issuer in connection with any Investment Support, and all payments, whether of interest, principal, fees, dividends, premiums or the proceeds from the liquidation of assets or of any other nature, that are made, received or guaranteed by the Issuer in connection with any Investment Support shall be exempt from Taxes, whether imposed directly on the Issuer or payable in the first instance by others. The two Governments confirm their understanding that such exemption shall apply only to the Issuer and not to Coinsurers. Neither projects receiving Investment Support nor investors in such projects shall be exempt from Taxes by operation of this Article, provided, however, that any Investment Support shall be accorded tax treatment no less favorable than that accorded to the investment support of any other national or multilateral development institution which operates in the United Mexican States. The Issuer shall not be subject to Taxes in connection with any transfer, succession or other acquisition which occurs pursuant to paragraph (c) of this Article or Article 3 hereof, but obligations for Taxes previously accrued and unpaid with respect to interests received by the Issuer shall not be extinguished as a result of such transfer, succession or other acquisition.

(c) If the Issuer, alone or with a Coinsurer, makes a payment to any person or entity, or exercises its rights as a creditor or subrogee, in connection with any Investment Support, the Government of the United Mexican States shall recognize the transfer to, or acquisition by, the Issuer and any Coinsurer of any cash, accounts, credits, instruments or other assets in connection with such payment or the exercise of such rights, as well as the succession of the Issuer and any Coinsurer to any right, title, claim, privilege or cause of action, existing, or which may arise, in connection therewith.

(d) With respect to any interests transferred to the Issuer or a Coinsurer or any interests to which the Issuer or a Coinsurer succeeds under this Article, in its own right or otherwise by contract or operation of law, the Issuer shall assert no greater rights than those of the person or entity from whom such interests were received. No Coinsurer shall be entitled to the benefits of this Agreement unless it is acting through, or its interests have been assigned to, the Issuer. However, as provided in paragraph (b) of this Article, Coinsurers are not entitled in any case to the fiscal privileges granted to the Issuer.

- (e) To the extent that the laws of the United Mexican States partially or wholly restrict ownership or acquisition by, or transfer or succession to, the Issuer of any assets or rights as described in paragraph (c) of this Article, the Government of the United Mexican States shall permit the Issuer to make appropriate arrangements to transfer such assets or rights to a person or entity permitted to own them under the laws of the United Mexican States.

ARTICLE 3

Amounts in the currency of the United Mexican States, including cash, accounts, credits, instruments or otherwise, acquired by the Issuer (or by the Issuer and any Coinsurer) upon making a payment, or upon the exercise of its rights as a creditor, in connection with any Investment Support for a project in the United Mexican States, shall be accorded treatment in the territory of the United Mexican States no less favorable as to use, conversion and transfer than the treatment to which such funds would have been entitled in the hands of the person or entity from which such amounts were acquired.

ARTICLE 4

(a) Any dispute between the Government of the United States of America and the Government of the United Mexican States regarding the interpretation or application of this Agreement, or concerning issues of international law in relation to projects or activities for which Investment Support has been provided, shall be resolved, insofar as possible, through negotiations between the two Governments. If, six months following a request for negotiations hereunder, the two Governments have not resolved the dispute, the dispute may be submitted, at the initiative of either Government, to a tribunal for resolution in accordance with paragraph (b) of this Article. A Government may not bring a claim under this Article concerning issues of international law in relation to projects or activities for which Investment Support has been provided if it has the right to bring that claim under the dispute settlement provisions of Chapter 20 of the NAFTA.

(b) The tribunal referred to in paragraph (a) of this Article shall be established and shall function as follows:

(i) Each Government shall appoint one arbitrator. Unless the parties otherwise agree, these two arbitrators shall by agreement designate a president of the tribunal who shall be a citizen of a third state and whose appointment shall be subject to acceptance by the two Governments. The arbitrators shall be appointed within three months, and the president within six months, of the date of receipt of either Government's request for arbitration. If the appointments are not made within the foregoing time limits, either Government may, in the absence of any other agreement, request the Secretary-General of the International Centre for the Settlement

of Investment Disputes to make the necessary appointment or appointments. Both Governments hereby agree to accept such appointment or appointments.

(ii) Decisions of the tribunal shall be made by majority vote and shall be based on the applicable principles and rules of international law. Its decisions shall be final and binding.

(iii) Each Government shall bear its own expenses incurred in connection with the proceedings before the tribunal. The expenses of the tribunal itself shall be borne equally by the two Governments.

(iv) In all other matters, the tribunal shall regulate its own procedures.

ARTICLE 5

(a) This Agreement shall enter into force on the date on which the Government of the United Mexican States notifies the Government of the United States of America that all legal requirements for entry into force of this Agreement have been fulfilled.

(b) This Agreement shall continue in force until six months from the date of a receipt of a note by which one Government informs the other of an intent to terminate this Agreement. In such event, the provisions of this Agreement shall, with respect to Investment Support provided while this Agreement was in force, remain in force so long as such Investment Support remains outstanding, but in no case longer than twenty years after the termination of this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at San Francisco, California, United States of America, on the 9th day of June, 2003, in duplicate, in the English and Spanish languages, both texts being equally authentic.

**FOR THE GOVERNMENT
OF THE
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